# Effective submissions

**Justice Susan Glazebrook**[1]

## Some important preliminaries

Submissions, both written and oral, are forms of communication. The primary audience is the judge (and, before then, your supervising partner). The secondary audience are those assisting the judge, such as Registry staff and research or law clerks. It is also, however, important to remember, especially for oral submissions given in open court, that the wider audience includes opposing counsel, the victims, the defendants and their families, as well as the media and the general public.

Concentrating first on the judge, the task of the prosecutor in an adversarial system is to persuade the judge that the Crown's position is correct.[2] This is subject to an overriding duty to the law and to the Court, a duty owed by all counsel.[3] But Crown prosecutors also have wider duties as explained in the Prosecution Guidelines issued by the Solicitor-General.[4] They must act in a manner "that is fundamentally fair and objective", act independently and take care to avoid sympathy, prejudice and bias. They should "give effect to the law while also trying to ensure that [submissions] reflect the interests of justice in the particular case and serve the

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1 Acting Judge of the Supreme Court of New Zealand/ Te Kōti Mana Nui o Aotearoa. This paper was prepared for a workshop for Crown prosecutors at BVA The Practice, Palmerston North, given on 18 September 2026. It is based on my earlier papers about legal writing and advocacy. The views expressed are my personal views and not those of the Court.

2 Kemel Bokhury, former judge of the Hong Kong Court of Final Appeal, in "the Essence of Advocacy" (2022) HKLJ 811 at 823 says that persuasiveness is the very essence of advocacy. He also says, at 813, that effective advocacy depends on careful preparation.

3 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, Chapter 2 Rule of Law and Administration of Justice, rr 2 and 2.1. For a discussion of what a duty to the law and the court entails see Lord Neuberger "Ethics and Advocacy in the twenty-first century" The Lord Slynn Memorial Lecture 2016 and Chua Lee Ming, Judge of the Supreme Court of Singapore, "Advocacy in Court: Musings and Observations" (2024) 36 S ACLJ 566 at 568-570. The second article concentrates on civil cases but much of the advice applies equally to criminal cases.

4 *The Solicitor-General's Prosecution Guidelines/ Te Aratohu Aru a te Rōia Mātāmua o te Karauna* as at 1 January 2025 [Prosecution Guidelines]. These guidelines set general expectations and not rules but, at the least, outline best practice to be followed.

good of society."[5] This may include making appropriate concessions when presenting submissions.

The Guidelines also say that prosecutors must bring all relevant circumstances to the court's attention but that this only includes information of which the prosecutor is aware and that there is no duty to seek out information.[6] In my view, this understates the responsibilities. Prosecutors cannot shut their eyes to information they are aware exists or is likely to exist where reasonable inquiries would unearth it (such as a search of available databases or inquiries of those likely to hold the information).

Looking to the wider audience, prosecutors should ensure that their submissions respect the dignity of all participants.[7] There is a special duty to be responsive to the needs of victims in accordance with the Guidelines[8] and the Victims' Rights Act 2002. Subject to name suppression issues, respect is likely to mean (especially in oral submissions) using people's names rather than identifying them by their position in the criminal case. And use your best endeavours to find out what they wish to be called and their pronouns.

There is also your (and the Crown's) reputation to consider. Respectful and fair submissions will enhance respect for the rule of law. In addition, this is unlikely to be the only time you encounter a particular judge or opposing counsel. Your reputation for being fair, not overstating a case and being unfailingly courteous and respectful is invaluable in the task of persuasion and also, where appropriate, in negotiating agreed solutions.

Prosecutors should also remember that defence counsel, and especially those with clients on legal aid, are often stretched and stressed. They may also have varying levels of skill. The duty to act in a fair manner as a Crown prosecutor means that you may on occasion need to draw the court's attention to arguments that should have, but have not, been made by opposing counsel. Sometimes, to assist the court, you may have to reframe the less than coherent arguments of opposing counsel. Assisting the court in this manner will be even more vital

5 See the general principles set out at [8] in the *Principal Guideline/Aratohu Mātāmua.*
6 See at [8.6] and [9].
7 See at [8.7]
8 *Victims/Ngā pārurenga*, in Prosecution Guidelines.

where a defendant is self-represented. These matters can, and should, be addressed respectfully.

For all audiences, the aim of the submissions (both written and oral) should be to explain, in terms as clear and simple as possible, what the case is about and why the Crown's position is correct (and more importantly why the opposing arguments should not succeed).

**Roadmap**

So how to make effective submissions? Some catchphrases.

Have a plan, Jan

First impressions count

Directing the traffic

Setting the scene

Simplicity is key

English and not lawyer

You are only human

Fresh eyes

Silver tongue

Under interrogation

A strong finish

***Have a plan, Jan***

Submissions should be structured in a logical and coherent manner.[9] That structure should lead inexorably to your conclusion. The best way to achieve this is to identify the issues (both factual and legal) that you (and the judge) must address and to structure your submissions accordingly.

You may find that you have to start writing before the issues and the answers to those issues become clear. That is fine but be ruthless in reorganising what you have written into a logical structure and in cutting out anything unnecessary. Treat that first draft as "throat clearing."

Not only is a structure good for achieving more comprehensible submissions, it is also good for ordering your thoughts. In other words, a logical structure affects the substance of the submissions as well as their form.

***First impressions count***

Capture the essence of the case at the beginning of the written submissions. In your first paragraph set out what the case is about factually and the broad issues arising. In your second paragraph outline your theory of the case and explain succinctly how and why it is the right one in terms of precedent, policy and the justice of the case as seen from the perspective of the Crown. Do this in a low key way (no jury speeches). Subtlety rather than overt partisanship will be more persuasive.

The two opening paragraphs in your written submissions are in addition to any fuller summary of your argument and the narrative of relevant facts. These first two paragraphs, apart from engaging the interest of the court, are essential for framing the summary of your client's position on the issues and assisting with the selection of background facts you need to cover.

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9 As noted by Helen Winkelmann in "Written Submissions" (New Zealand Bar Association Webinar, 7 May 2014), "[i]t should not require the skills of a forensic archaeologist to excavate [the critical propositions] from the rubble of a poorly structured submission." See also Gillian Coumbe "Crafting readable submissions" (Paper presented at the New Zealand Bar Association Seminar on written advocacy, 7 May 2014) at 8–11.

Try and get your first two paragraphs to read as if you are explaining the case to an interested, but slightly distracted, non legally trained friend over coffee. Avoid legalese, references to statutes and too much detail.

Aim for an arresting first sentence where appropriate. The following make most lists of the best opening lines in literature:

> It is a truth universally acknowledged, that a single man in possession of a good fortune, must be in want of a wife.[10]
>
> All children, except one, grow up.[11]
>
> He was an old man who fished alone in a skiff in the Gulf Stream and he had gone eighty-four days now without taking a fish.[12]
>
> Happy families are all alike; every unhappy family is unhappy in its own way.[13]

All are simple but catch the ear, engage the attention and anticipate the story to come.

In the legal sphere one example is the Constitutional Court's opening in *Minister of Home Affairs v Fourie*.[14] Sachs J began his judgment with:

> [1] Finding themselves strongly attracted to each other, two people went out regularly and eventually decided to set up home together. After being acknowledged by their friends as a couple for more than a decade, they decided that the time had come to get public recognition and registration of their relationship, and formally to embrace the rights and responsibilities they felt should flow from and attach to it. Like many persons in their situation, they wanted to get married. There was one impediment. They are both women.

It is probably obvious from the opening that the Court unanimously declared that the common law definition of marriage (man/woman) was inconsistent with the South African Constitution.

Telling the story of the case and outlining your theory of the case at the outset is even more important for oral submissions than it is for the written submissions. You could just read out

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10 Jane Austen *Pride and Prejudice* (T Egerton, Whitehall, 1813).

11 J M Barrie *Peter Pan* (Hodder & Stoughton, London, 1911).

12 Ernest Hemingway *The Old Man and The Sea* (Charles Scribner's Sons, New York, 1952).

13 Leo Tolstoy *Anna Karenina* (The Russian Messenger, Moscow, 1878).

14 *Minister of Home Affairs v Fourie* 2006 (1) SA 524 (CC). Sachs J was writing for eight of the nine judges. O'Regan J wrote a separate judgment, agreeing with all of Sachs J's reasons except on the issue of remedies: see at [165].

those first two paragraphs of your written submissions but it would be more effective to paraphrase them in a more informal (but not too informal) manner.

***Directing the traffic***

The next stage is for a "road map" that explains the structure of the written submissions. Informative headings are a good idea and, where the submissions are lengthy, a table of contents. Split the argument into bite sized chunks, usually on an issue by issue basis.

In oral submissions a roadmap is even more important. Knowing what is coming keeps the audience engaged.

***Setting the scene***

You will have identified the essential facts and broad issues in your opening two paragraphs of your written submissions. It is now time to provide a summary of the background facts. For the judge's sake, this is best done succinctly and in as neutral a fashion as possible, with any factual contests clearly identified. Only set out the facts which are necessary for the decision, although it might not hurt to include a few facts that capture the human interest in the case. Arrange them so you "tell the story" in an interesting manner.

You then need to identify and summarise each of the issues and sub issues, the Crown's position on each of them as well as why the defence position is in error.

While you want to persuade, beware of putting too much of a "spin" on the facts and the law. Try and find as much neutral and uncontroversial ground as possible so as to narrow the battlefield. That helps with conciseness too.

Aim to write so that the summary could be detached from the rest of the submissions and read alone as a persuasive document in its own right. Ideally, it should make the reading of the remainder of the submissions (apart from the opening paragraphs) optional.

In less complicated cases, the summary may be all you need or you may only need to elaborate on certain of the issues in the remainder of your submissions.

In oral submissions, after your roadmap and a brief summary of relevant facts, it might be better to start going through issue by issue rather than summarising the whole argument up front. Otherwise, you could get waylaid by questions from the Bench before you have had time to develop the argument fully. Start your oral submissions with your best argument.

***Simplicity is key***[15]

The rest of your submissions should be structured on an issue by issue basis. Have the confidence to rely on your best arguments – the kitchen sink approach will likely just serve to irritate the judge.

For each issue, set out the proposition first and then give only the main authority you rely on. Legal search engines are wonderful but it is not a pie eating contest. Quality not quantity. Avoid long quotations from cases. Most people skip over them (and judges are people too).

Know and deal with the weak points of your case up front. The same applies to contrary authorities. If not essential, it may even be better to concede some of the possible points that could be made.[16]

No Latin unless strictly necessary and, if you must use it, give a translation. Meet the usual rules of good writing. Use short sentences. One idea per paragraph. Keep adjectives, adverbs and literary flourishes to a minimum. Submissions can ironically appear weaker if adorned with hyperbole.[17]

Being concise is not the same as short (although, where possible, short is a good idea). It is getting rid of unnecessary detail. Give procedural history only if you must and it is necessary for the decision.

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15 Arthur H Stroyd, Jr "Lessons Learned in Effective Advocacy: Tips form Judge Weis's Former Law Clerks" (2024) 85 University of Pittsburgh Law Review 683 gives some valuable advice on achieving simplicity, including the use of bullet points.

16 See Winkelmann, above n 9, where she noted that concessions allow "the true issues to emerge clearly, and Judges value responsible concessions, and they value counsel who make them".

17 Robert French, Chief Justice of Australia, "Appellate Advocacy in the High Court of Australia" (Speech to the World Bar Conference, London, 29 June 2012) at 4.

Edit, edit and edit. Be ruthless. Dare yourself to cut out half and even half again. As Justice Louis Brandeis noted, "[t]here is no such thing as good writing. There is only good re-writing."[18]

***English not lawyer***

Use English not lawyer in your submissions. Borrowing from Jim Raymond, English Professor turned teacher of legal writing, I give an example of two ways of telling the same story and you can decide which might be more understandable and therefore more persuasive:[19]

> This is an application by three inter-related plaintiffs against two related defendants (the second defendant having been joined at the commencement of the hearing without opposition) seeking an interim injunction against the defendants, their agent, servants or employees, restraining them from using the word 'Regal' upon or in relation to paints; or a trademark so nearly resembling Regal as to be likely to cause confusion between the plaintiff's products and the defendant's product, and more specifically for an injunction to prevent the use of the word, Regal, or any word confusingly similar there to by the defendants upon paint containers, advertising materials, signs, packaging, fascias, stationary, labels or other printed matter.

That is the lawyer version (for those who are so mired in lawyer they thought it to be English). Now for the English version, which is a slightly adapted version of Professor Raymond's example:

> Regal Paints and its associates, have been using the name, "Regal", for many years. They seek an injunction to prevent Prince and Princess Paints, from using the word "Regal" (or anything too similar) in relation to their paint products.

***You are only human***

All humans have both conscious and subconscious biases, including counsel and judges. Judge Richard Posner, a former judge of the United States Court of Appeals for the Seventh Circuit, has said:[20]

> Intuition, emotion, and preconception are all forms of telescoped or tacit thinking, as contrasted with explicit, logical, step-by-step reasoning, and all are influenced not

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18 Justice Louis Brandeis, quoted in Justice Susan Keifel AC "Reasons for judgment: objects and observations" (Speech delivered at the Sir Harry Gibbs Law Dinner, University of Queensland, 18 May 2012) at 7.

19 Professor James C Raymond in "Writing to Be Read *or* Why Can't Lawyers Write Like Katherine Mansfield?" (1997) 3 TJR 153 at 160–161. See also James C Raymond "The Architecture of Argument" (2004) 7 TJR 39.

20 Richard A Posner *How Judges Think* (Harvard University Press, Cambridge (US), 2008) at 98.

> only by such obvious factors as upbringing, education, the beliefs of peers, and reigning social beliefs but also by personality.

Structuring your submissions in a logical, transparent and comprehensible manner requires you to test your intuitive response to a case and can assist in exposing reasoning flaws and biases. Your duty is to assist the judge in making a decision in accordance with the law.

On a related point, be careful with terminology. Some common phrases have an origin that could offend some people and careless use of language could give at least a perception of a prosecutor not being fair and not bringing an independent mind to the case.

Unless absolutely essential, do not use pejorative or swear words even when quoting.

***Fresh eyes***

Get someone to check your work if possible. You can get too close. This particularly applies to any mathematics in the submissions. Lawyers and judges tend not to be the best at adding up.

Typos make you look sloppy. Inaccuracies in the facts and the law are even worse. Check your authorities at the source. Do not rely on secondary sources.[21] They often have the citation or quotation slightly wrong and sometimes even the principle.

Check that the case that you are relying on has not been appealed. Remember the annoying tendency for case names to change on appeal. Where you are dealing with a case with multiple judgments, make sure you give the majority view, or, if not, make it clear it was not the view of the court and explain why it is nevertheless helpful.

If you are referring to an overseas case, then give the New Zealand case that adopted it. If it has not been adopted here, explain why it should be relied on.

Make sure you have the correct version of any relevant statute in the materials and explain why that is the correct version (and probably footnote later versions for information).

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[21] Including other judgments that have cited the case.

If you do not have anyone to read over the submissions yourself, then you should put your own fresh eyes over it. To do this, leave some time between writing and proofreading the submissions.[22]

***Silver tongue***[23]

Some general points on oral submissions. These should be related to the written submissions. This is not to say that you should read the written submissions (please do not). It is not to say that the oral submissions should necessarily follow the structure of the written submissions, although it is usually less confusing for the judge if they do. It is a good idea to limit the oral submissions to your best points (even more so than in the written submissions).[24]

Start thinking about the structure and content of your oral submissions as soon as possible. Do not ever try and wing it. It almost always ends in tears. The appearance of spontaneity of brilliant advocates almost always builds on lots of reading and thinking about the case before the hearing (and experience).

Experience does count. Allow junior counsel to get some. Modern judges welcome juniors having a speaking role (and usually will be nicer to them than they are to senior counsel).

Oral advocacy matters. It can change the preliminary (and sometimes even the fixed) views of the judge.

Remember, however, that the written submissions will be read again if judgment is reserved. They will therefore endure after the memory of your brilliant, or not so brilliant, oral advocacy has faded.

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22 For tips on effective self-editing, see Wes Hendrix "From Good to Great: The Four Stages of Effective Self-Editing" (2013) 14(2) J App Prac & Process 267.

23 For general advice on oral advocacy, see Lord Pannick KC, *Advocacy,* Hamlyn Lectures, Cambridge University Press, 2023. He sets out his ten principles of effective advocacy from 16-63 of the first lecture, replete with anecdotes and war stories. Lord Pannick's principles include: be prepared, focus on your best points, address the weaknesses in your argument, plain speaking as against florid oratory, avoid humour and never lose your temper. The other two lectures, also well worth a read, are on the morality of advocacy and the future of advocacy.

24 For a discussion as to the relationship between written and oral submissions, see Karl N Llewellyn "A Lecture on Appellate Advocacy" (2005) 7(1) J App Prac & Process 173 at 188–189.

### *Under interrogation*

Most judges will ask questions. They are not trying to trap counsel. Sometimes they are asking questions because are unsure and genuinely want to know the answer. Sometimes they are asking in order to test their preliminary views and sometimes they are asking questions to assist counsel in formulating their best arguments.

Whatever the reason, listen carefully to the question and take a moment to consider the best way of responding. If you do not fully understand the question, then ask for clarification. If you need time to check any of the materials, then ask for it. Most judges would prefer a considered response to one that is not fully thought through. If you are coming to the point later in your submissions, then feel free to say so. Most experienced counsel, however, prefer to give at least a preliminary response at the time of the question.

You should welcome questions from the Bench as they allow you to assess any areas that might need more clarification or further persuasion. The best way to prepare for questions is to make sure that you have a thorough knowledge of your case.

If there have been multiple questions, remember to take a moment before you sum up your argument to check that you have covered everything you planned to cover.

### *A strong finish*

Just as the opening should catch the attention so should the end of your submissions. This is the lasting impression you want to convey.[25] Your conclusion should sum up your argument succinctly and explain why your theory of the case, explored in the opening paragraphs, is the one that should carry the day.

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[25] The importance of first and last impressions is highlighted by psychological research which has shown that, when asked to recall a list of items, individuals are more likely to remember the first few and last few items. This is called the primacy and the recency effect, respectively. See for example B B Murdock Jr "The serial position effect of free recall" (1962) 64(5) Journal of Experimental Psychology 482.

**Final quote**

In case all of this has left you slightly dispirited, I leave you with a quote from Justice Robert Jackson. He apparently once said that, when he was Solicitor General of the United States, he made three arguments in every case:[26]

> "First came the one that I planned – as I thought, logical, coherent, complete. Second was the one actually presented – interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night."

[26] Robert Jackson, former Associate Justice of the United States Supreme Court, "Advocacy Before the United States Supreme Court" (1951) 37(1) Cornell LQ 1 at 6.